

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT No. Z-081063 and All Other
Seaman Documents

Issued to: LEROY HARDEN, Jr.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1284

LEROY HARDEN, Jr.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 12 May 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as a messman on board the United States SS AFRICAN GLEN under authority of the document above described, on 25 January and 19 March 1961, Appellant was wrongfully absent from the ship and his duties while the ship as anchored at Monrovia, Liberia.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered pleas of guilty to the charge and each specification. The Examiner changed the pleas to not guilty after Appellant testified that, on one occasion, he could not get a launch to take him back to the ship and, on the other date, he was unable to return to the ship because of an upset stomach.

The Investigating Officer introduced in evidence certified copies of entries in the Official Logbook, relating these two absences from the ship, and the testimony of the Chief Steward. This witness stated the Master posted a notice that the crew was allowed to go on shore leave with the understanding that the seamen would have to assume the responsibility of getting back to the ship for duty because the company could not furnish launch service to the anchorage. Appellant and his only witness other than himself corroborated this.

Appellant's witness was not questioned about the claimed illness of Appellant on one of the dates in question.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of three months outright plus six months on twelve months' probation. This includes a prior two months' suspension which had been placed on probation.

During the past ten years, Appellant's record indicates four offenses of failure to perform his duties and three offenses of failure to join his ship.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that: Point I. The charge and specifications were not proved. There is no showing that Appellant failed, without reasonable cause, to return to the ship after being ashore on authorized leave. There is no evidence that the ship was unable to furnish launch service. On one occasion, Appellant was too ill to return on board. Both of these reasons justify his failure to be on board.

Point II. The Examiner's repeated reference to the original plea of guilty shows that he was biased against the Appellant.

APPEARANCE: George J. Hammerman, Esquire, of New York City, of Counsel.

OPINION

The evidence is clear that the members of the crew who went ashore assumed the responsibility of being able to return to the ship in time to perform their assigned duties. The fact that Appellant was not able to obtain transportation to the anchorage on one of these dates was a risk which he took when he went ashore. Hence, it does justify his absence. Whether the ship could have furnished launch service is not an issue in the case since the crew was on notice that there would be no such service.

Concerning Appellant's alleged illness, there is only his testimony that he could not get to the ship because of an upset stomach. As a matter of credibility, the Examiner rejected the testimony of Appellant that he was ill. Moreover, there are no details to support Appellant's bare statements that his "upset stomach" (R.6) caused such a serious illness that he "couldn't make it back" (R. 9).

There is no evidence that the Examiner was prejudiced against Appellant. On the contrary, the fairness of the Examiner is indicated by the fact that the pleas were changed from guilty to not guilty solely on the initiative of the Examiner when he felt that Appellant's testimony was inconsistent with his plea of guilty.

Appellant's extensive prior record of similar offenses justifies the order imposed for these two relatively minor offenses.

ORDER

The order of the Examiner dated at New York, New York, on 12 May 1961, is AFFIRMED.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Signed at Washington, D.C., this 12th day of February 1962.